

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

2006 DEC 26 PM 12:09

CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY  DEPUTY

TAILWIND SPORTS CORP.

vs.

THE BERRY GROUP

Civil Action No.

A06CA1001LY

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(a) (DIVERSITY)

Pursuant to 28 U.S.C. §§ 1441(a) and 1446, defendant, The Berry Group, ("Berry"), hereby removes this civil action to the United States District Court for the Western District of Texas, Austin Division. In support of this notice, Berry states as follows:

1. On June 16, 2006, plaintiff, Tailwind Sports Corp., ("Tailwind"), filed its original petition in the District Court of Travis County, Texas, entitled *Tailwind Sports Corp. v. The Berry Group*, Cause No. D-1-GN-06-002183, (the "State Action").
2. In the complaint, Tailwind alleged that it is a Delaware corporation with its principal place of management in Austin, Texas.
3. Berry is based in Belgium and is a corporation formed under the laws of Belgium and with its principal place of business in Belgium.
4. Berry's first notice of the pendency of this action was when one of its attorneys, David I. Roche, received a fax dated November 28, 2006, from counsel for Tailwind in the State Action. A copy of the November 28, 2006, cover letter which accompanied the fax is attached here as Exhibit 1.

5. In its original petition, Tailwind claims the existence and a breach of a sponsorship agreement between Berry and Tailwind. Tailwind asserts claims for breach of contract and quantum meruit.

6. Although Tailwind did not specify the amount of damages, instead asking the jury and court for the maximum amount of damages allowable at law or in equity, on May 30, 2006, Tailwind, through its counsel, sent Berry a letter claiming that as of May 25, 2006, Berry owed Tailwind at least 270,000 Euros, consisting of 250,000 Euros principal and 20,000 Euros in interest accrued through May 25, 2006.

7. Based upon the foreign exchange rate applicable on May 25, 2006, and the foreign exchange rate which exists today, the amount demanded exceeds the sum of \$75,000, exclusive of interest and costs.

8. For purposes of diversity jurisdiction, Tailwind is a citizen of Delaware and Texas and Berry is a citizen of Belgium and the amount in controversy exceeds \$75,000, exclusive of interest and costs. This Court therefore has original jurisdiction of the civil action under 28 U.S.C. §1332(a) as it involves citizens of a state and citizens of a foreign state. As a result, this action is removable to this Court under 28 U.S.C. §1441(a).

9. This notice is timely as Berry's first knowledge or notice of the pendency of the petition was its receipt of the November 28, 2006, fax from Tailwind's counsel. Therefore, because this notice is being filed within thirty (30) days after receipt by Berry, through service or otherwise, of a copy of the initial pleading, this action is removable under 28 U.S.C. §1446(b).

WHEREFORE, The Berry Group, prays and respectfully requests that this cause of action be removed from the District Court of Travis County, Texas, to the United States District Court for the Western District of Texas, Austin Division.

Respectfully submitted,

BAKER & McKENZIE, L.L.P.



John C. Filosa

Illinois Bar No.: 6187981 *

130 East Randolph Drive

Chicago, Illinois 60601

Ph: (312) 861-8000

Fax: (312) 698-2153

Email:

john.c.filosa@bakernet.com

* Admitted in the Western District of Texas

Attorney In Charge for Defendant
The Berry Group

OF COUNSEL:

BAKER & McKENZIE LLP

David I. Roche

130 East Randolph Drive

Chicago, Illinois 60601

Telephone: (312) 861-8000

Facsimile: (312) 698-2363

Email: david.i.roche@bakernet.com

BAKER & McKENZIE LLP

Elias Mark

Texas Bar No.: 24046349

Fed. I.D. No.: 565470

711 Louisiana

Suite 3400

Houston, Texas 77002

Telephone: (713) 427-5000


Facsimile: (713) 427-5099

Email: elias.mark@bakernet.com

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December 2006, a true and correct copy of the foregoing instrument has been served by Federal Express, facsimile, hand delivery, and/or U.S. certified mail, return receipt requested on the following counsel of record:

Timothy J. Herman
Sean E. Breen
Herman, Howry & Breen, L.L.P.
1900 Pearl St.
Austin, Texas 78705-5408
Telephone: (512) 474-7300
Facsimile: (512) 474-8557



Elias Mark

NOV. 28. 2006 1:38PM

HERMAN HOWRY & BREEN, LLP

NO. 4541 P. 2

Herman Howry & Breen LLP

1900 Pearl Street
Austin, Texas 78705-5408

(512) 474-7300

(512) 474-8557 Fax

Sean E. Breen

Direct Dial: (512) 474-9484

E-MAIL: sbreen@hermanhowry.com

November 28, 2006

Via Facsimile 312-861-2899

David L. Roche

Baker & McKenzie, LLP

One Prudential Plaza, Suite 3500

Chicago, Illinois 60601

Re: Tailwind Sports - Sponsorship Agreement

Dear Mr. Roche,

Along with Tim Herman, I represent Tailwind Sports Corp.

Enclosed is a copy of the original petition that has been filed in this matter. Please let me know if you will agree to accept service or if I should institute service on your client formally.

My client is still willing to discuss resolving this without litigation, so feel free to give us a call if you believe your client is interested in meaningful settlement discussions. If not, I look forward to hearing from you within a few days regarding service.

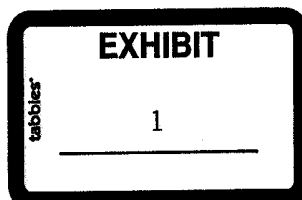
Very truly yours,



Sean E. Breen

SEB/mr
Enclosure

cc: Tim Herman



6-16-06

CAUSE NO. D-1-GN-06-002183

TAILWIND SPORTS CORP.

VS.

THE BERRY GROUP

§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345 JUDICIAL DISTRICT

06 JUN 15 4:55

Amari Rodriguez
DISTRICT CLERK
TRAVIS**PLAINTIFF'S ORIGINAL PETITION & REQUEST FOR DISCLOSURE**

Tailwind Sports Corp. ("Tailwind") files its original petition and respectfully requests the jury and Court to enter judgment in its favor on all causes of action against The Berry Group.

I. Discovery Control Plan

1. Discovery in this case is intended to be conducted under Level 3 pursuant to Texas Rules of Civil Procedure.

II. Parties

2. Tailwind Sports Corp. is a Delaware corporation with its principal place of management in Austin, Texas.

3. Defendant, The Berry Group, based in Belgium, may be served with process through service on its president, Luc De Clerck, at The Berry Group, Ingelmunstersteenweg, 162, B - 8780 Oostrozebeke, Belgium.

III. Venue & Jurisdiction

4. The district court of Travis County has jurisdiction of this case and all parties, and venue is appropriate in Travis County. The Berry Group and Tailwind agreed and consented to personal and subject matter jurisdiction in Travis County, Texas. The parties agreed to venue in Travis County, Texas. Plaintiff is managed in Travis County, Texas. Travis County is where Defendant was to perform under the Agreement.



IV. Background

5. Tailwind entered a sponsorship agreement ("the Agreement") with The Berry Group. Defendant has refused to pay sums it owes Tailwind. Tailwind materially performed its required obligations. The Berry Group did not. The Berry Group breached its agreement without justification. Further, The Berry Group has been unjustly enriched.

V. Breach of Contract

6. Tailwind and The Berry Group had a valid and enforceable contract. The Berry Group has breached the contract. Tailwind has suffered damages as a result of The Berry Group's breach.

VI. Quantum Meruit

7. Pleading in the alternative, if necessary, Tailwind is entitled to recover in Quantum Meruit for the value rendered The Berry Group. A substantial benefit was conferred on The Berry Group. The Berry Group accepted that benefit, but has refused to fully and adequately pay Tailwind for the benefit and is unjustly enriched.

VII. Other Causes of Action

8. Tailwind reserves the right to plead and prove other causes of action against The Berry Group, including all alternative causes.

VIII. Damages

9. Tailwind asks the jury and the court for the maximum amount of damages available at law or in equity, including sums due under the Agreement and/or the true value and enrichment Berry Floor received, attorney's fees, interest and costs of court.

IX. Conditions Precedent

10. All conditions precedent have been performed or have occurred.



X. Jury Demand

11. Tailwind requests a trial by jury and tenders the appropriate fee.

XI. Request for Disclosure

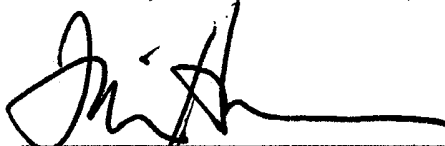
12. Tailwind requests the defendant provide information responsive to Texas Rules of Civil Procedure 194.2 (a)-(l) within fifty days of service of this petition.

XII. Prayer

Tailwind prays that The Berry Group be cited to appear and answer Plaintiff's Original Petition and Request for Disclosure and that upon final hearing, it be awarded all damages, attorney's fees, interest, costs of court and other relief to which it is entitled, at law, in equity or both.

Respectfully submitted,

HERMAN, HOWRY & BREEN, L.L.P.



Timothy J. Herman
State Bar No. 09513700
Sean E. Breen
State Bar No. 00783715
1900 Pearl Street
Austin, Texas 78705-5408
(512) 474-7300
(512) 474-8557 FAX

**ATTORNEYS FOR
TAILWIND SPORTS CORP.**



6-16-06

Herman Howry & Breen

L.L.P.

1900 Pearl Street
Austin, Texas 78705-5408

(512) 474-7300

(512) 474-8557 Fax

Timothy J. Herman

E-MAIL: therman@hermanhowry.com

June 16, 2006

Via Hand Delivery

Amalia Rodriguez-Mendoza
Travis County District Clerk
1000 Guadalupe St.
302 Courthouse
Austin, TX 78767-1748

D-1-GN-06-002183

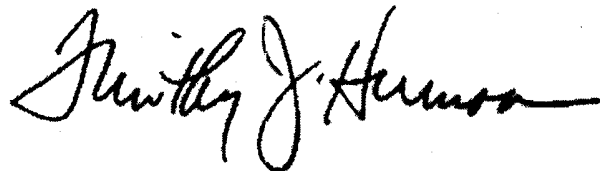
Re: Cause No. _____; *Tailwind Sports Corp. v. The Berry Group*;
In the 345THth Judicial District Court, Travis County, Texas

Dear Ms. Rodriguez-Mendoza:

Enclosed for filing in the above-referenced matter, please find an original and one copy of Plaintiff, Tailwind Sports Corp.'s, Original Petition. Please file the original and return a file stamped copy to me via my messenger. I also enclose my firm check in the amount of \$270.00 to cover the filing and jury trial fees. Please notify my office when the citation is ready to be picked up and I will arrange for service of process.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to call me.

Very truly yours,



Timothy J. Herman

TJH/cbh
Enclosures



000123203

Case:d-1-gn-06-002183 with (2) documents

Filed Date	Category	Description	Additional Info
6/16/2006	PET-PL ...	ORIGINAL PETITION/APPLICATION Judges Notes/Comments	PLAINTIFF'S ORIGINAL PETITION & REQUEST FOR DISCLOSURE



JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Tail Wind Sports Corp.

(b) County of Residence of First Listed Plaintiff Travis County, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Timothy J. Herman, Herman, Howry & Breen, L.L.P., 1900 Pearl St., Austin, TX 78705
(512) 474-7300

DEFENDANTS

The Berry Group

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

John C. Filosa, Baker & McKenzie, L.L.P., 130 East Randolph Dr., Chicago, IL 60601
(312) 861-8000

A06CA1001LY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input checked="" type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property					

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(a); 28 U.S.C. 1441(a).

Brief description of cause:
Breach of contract; quantum meruit.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Dec. 22, 2006

FOR OFFICE USE ONLY

John C. Filosa app *Shirley*

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO82
(Rev. 4/90)

ORIGINAL

404364

RECEIPT FOR PAYMENT
UNITED STATES DISTRICT COURT
 for the
WESTERN DISTRICT OF TEXAS

at

Austin

RECEIVED FROM

Baker & McKenzie
711 Louisiana # 3400
Houston TX 77002

Fund	
6855XX	Deposit Funds
604700	Registry Funds
	General and Special Funds
508800	Immigration Fees
085000	Attorney Admission Fees
086900	Filing Fees
322340	Sale of Publications
322350	Copy Fees
322360	Miscellaneous Fees
143500	Interest
322380	Recoveries of Court Costs
322386	Restitution to U.S. Government
121000	Conscience Fund
129900	Gifts
504100	Crime Victims Fund
613300	Unclaimed Monies
510000	Civil Filing Fee (1/2)
510100	Registry Fee

ACCOUNT	AMOUNT
086900	6000
510000	19000
086400	10000
TOTAL	35000
Case Number or Other Reference	
1:06-CV-1001	

New Case

Tail Wind Sports
 v. Berry Group

\$ Checks and drafts are accepted subject to collection and full credit will only be given when the check or draft has been accepted by the financial institution on which it was drawn.

DATE	Cash	Check	M.O.	Credit	DEPUTY CLERK
12-26-06		<input checked="" type="checkbox"/>			<u>Katz C</u>